DIRECTOR-GENERAL OF INLAND REVENUE

v.

ROTHMANS OF PALL MALL (M) BHD.

SUPREME COURT, KUALA LUMPUR
MOHD. AZMI SCJ
WAN HAMZAH SCJ
WAN SULEIMAN SCJ
[CIVIL APPEAL NO. 232 OF 1987]
25 NOVEMBER 1988

REVENUE LAW: *Double Taxation Agreement 1968 between Malaysia and Singapore - Whether company entitled to double taxation relief - Interpretation of Article XVIII para. 2(i) of agreements - Immaterial and irrelevant which year of assessment.*

Respondent company was incorporated in Malaysia in 1961. It had a branch in Singapore which ceased business permanently on 30 June 1968. Pursuant to the Singapore Income Tax Act the respondent company paid RM531,770.20 income tax on the income of its Singapore Branch of RM1,329,433 for the period 1 January 1968 to 30 June 1968. There was no assessment of income tax on the respondent company for the assessment of year 1969 in respect of its Singapore Branch.

In Malaysia, income tax assessed on the respondent company's income of RM3,436,029 was RM1,546,214.40 for the year of assessment 1969. The income of RM3,436,029 included the income of its Singapore branch of RM1,329.433 for the period 1 January 1968 to 30 June 1968.

The respondent company claimed from the appellant double taxation relief in the sum of RM531,770.20 which it paid as income tax in Singapore but the appellant disallowed it.

The respondent company appealed to the special commissioners who dismissed the appeal and affirmed that the respondent was not allowed to the relief. The respondent further appealed to the High Court and the Court allowed the appeal.

The appellant asked the Supreme Court to restore the order of the Special Commissioners.

Held:

[1] Paragraph 2 of Article XVII of the Double Taxation Agreement 1968 makes no reference to any year of assessment, so that it is immaterial and irrelevant which year of assessment the tax mentioned in that paragraph is in respect of the words "that income" specifically and expressly refer to the same "income derived from Singapore" referred to earlier in that paragraph.

[2] Decision of the High Court upheld and appeal dismissed with costs.

[Appeal dismissed with costs.]

For the appellant - Abdul Hamid bin Mohamed, SFC
For the respondent - S. Woodhull; M/s. Shearn Dalamore & Co.

JUDGMENT

Wan Hamzah SCJ:

Under s. 42 of the Courts of Judicature Act.

The question for the determination by the Supreme Court in this appeal is whether Rothmans of Pall Mall (Malaysia) Berhad (the respondent company) is entitled under the Double Taxation Agreement 1968 between Malaysia and Singapore to double taxation relief in Malaysia for the Malaysian year of assessment 1969 in respect of the Singapore income tax of RM531,770.20 paid by the respondent company in Singapore on the profit for the period 1 January 1968 to 30 June 1968.

The following are the facts of the case. The respondent company was incorporated in Malaysia in 1961 and has a place of business at Petaling Jaya, Selangor. It had a branch in Singapore which ceased business permanently on 30 June 1968. When the branch ceased business the Singapore authorities assessed income tax on the respondent company for the Singapore year of assessment 1968 on the income of the branch for the period from 1 January 1968 to 30 June 1968 pursuant to the Singapore Income Tax Act. The income amounted to RM1,329,433 and the income tax assessed thereon was RM531,770.20. The respondent company paid it. There was no assessment of income tax on the respondent company for the Singapore year of assessment 1969. In Malaysia the income of the respondent company totalling RM3,436,029 was charged to income tax of RM1,546,214.40 for the Malaysian year of assessment 1969. This income included the same income of RM1,329,433 of the branch in respect of which the respondent company paid in Singapore the income tax of RM531,770.20 for the Singapore year of assessment 1968. The respondent company claimed from the Director General of Inland Revenue of Malaysia (the appellant) double taxation relief in the sum of RM531,770.20 in respect of the income tax which it paid in Singapore, but the appellant disallowed it. The Special Commissioners dismissed the respondent company's appeal and affirmed that the respondent company was not entitled to the relief. The Special Commissioners stated as follows:

> It has to be noted that the 1968 Agreement only provides the double taxation relief on the basis of the year of assessment, which is very clear and explicit and effect should be given to it. In the instant case, the Malaysian tax was for the year of assessment 1969, whereas there was no corresponding assessment raised by the Singapore tax authorities for the year of assessment 1969. As such, there was no way possible to apply the double taxation relief as advocated under the 1968 Agreement.

The respondent company's further appeal to the High Court was allowed, and the appellant now asks the Supreme Court to restore the order of the Special Commissioners.

The provisions of the Double Taxation Agreement 1968 which are relevant in this case are those contained in Article XVIII para. 2(i) which reads as follows:

> Subject to the provisions of the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, Singapore tax payable whether directly or by deduction, in respect of income derived from Singapore shall be allowed as a credit against Malaysian tax chargeable in respect of that income.

It should be noted that in para. 2(i) of Article XVIII no reference is made to any year of assessment, so that it is immaterial and irrelevant which year of assessment the tax mentioned in that paragraph is in respect of. It is important to note the words "that income" at the end of that paragraph. These words specifically and expressly refer to the same "income derived from Singapore" referred to earlier in that paragraph. Thus that paragraph means that Singapore

tax payable in respect of a certain income derived from Singapore shall be allowed as a credit against Malaysian tax assessed on that same income derived from Singapore, irrespective of which year of assessment that Singapore tax was assessed for and irrespective of which year of assessment that Malaysian tax was assessed for. In the present case the Singapore income tax of RM531,770.20 referred to above was assessed on the income of the respondent company's Singapore branch of RM1,329,433. The Malaysian income tax of RM1,546,214.40 referred to above includes income tax assessed on that same income of RM1,329,433 of the branch. Therefore a credit of RM531,770.20 representing the amount of that Singapore income tax should be given against that Malaysian income tax of RM1,546,214.40 although that Singapore income tax was not in respect of the same year of assessment as that Malaysian income tax.

Therefore the decision of the High Court is correct. We dismiss this appeal with costs.

Also found at [1989] 1 CLJ 132